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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1025

BURTICE A. HINES, et al.,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., et al.,
Respondents.

BRIEF OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN OPPOSITION TO PETITION FOR CERTIORARI

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STATEMENT OF THE CASE

The petitioners are former employees of Anchor Motor Freight who were discharged for dishonesty—turning in motel receipts for reimbursement in a sum greater than that which they actually paid for lodging. One specific motel in Batavia, New York was involved.

The motel is owned by a carpenter who owns and operates the motel at which 60-90 drivers stay each month (R 444). The discrepancy was discovered by supervisors working for

Anchor Motor Freight. Records and affidavits were secured by Anchor from the owner of the motel and from the motel clerk. Registration cards showing the amount paid by the drivers were compared with receipts turned in by the drivers to Anchor. (R 421, 421, 422, 423-426)

At a meeting in the Local Union offices, Anchor confronted the drivers and the union representatives with these documents and stated that the men would be discharged. This discharge would have been effectuated immediately but for the fact that the Union threatened a strike if Anchor did not agree to retain the employees on the payroll until after the hearing was held before the Joint Arbitration Panel. (R 562)

At the hearing all parties, drivers, union agents and the employer were present and presented their testimony and evidence. (R 74, 76, 81) The arbitration panel sustained the discharge of the drivers.

Subsequently, the petitioners sent an attorney to New York to visit the motel owner and secured an affidavit from the motel owner which denied personal knowledge of the handling of the funds and imputed all personal knowledge to his clerk. (R 452) No second or amended statement was secured from the room clerk by petitioner's counsel for submission to the Arbitration Panel. The statement by the motel owner was filed with the Arbitration Panel along with a request for rehearing. After reviewing the document the panel denied rehearing.

During the course of the court litigation the parties took depositions from nine witnesses including the motel clerk. The clerk asserted in his deposition that he was pocketing the money himself and was making false entries on the registration cards. Although this deposition was taken from the clerk months after the litigation was commenced he was still employed by the motel.

The *owner* of the motel admitted that when two drivers stay in one room, they both sign the same registration card and each

receive a separate receipt. (R 446) For example, on 5-24-67 the petitioners Hines and Albin stayed in a room together. The registration card shows a payment of $12.48 and *each* turned a receipt in to Anchor and collected $8.32. (R 423)

The petitioners asserted their innocence, but the physical facts and a close reading of the exact statement made by the motel owner as well as the clerk led the joint arbitration panel to an opposite conclusion. The trial court accepted the decision of the Joint Arbitration Panel as a complete disposition of the petitioner's case. The trial court had all the evidence which would be produced at trial due to the extensive discovery which had been conducted. However, the trial court could not find even a "threshold issue of bad faith." (App. Appendix p. A. 5).

The Court of Appeals sustained the dismissal of the case against the employer and against the International Union. However, the Court of Appeals sent the case back for trial against the Local Union because of the *alleged* political hostility inside the Local Union to these petitioners. No petition for certiorari was filed by the Local Union at this stage of the proceedings since there has been no final judgment entered against the Local.

ARGUMENT

The decision of the Court of Appeals does not conflict with the decisions of this Court. On the contrary, both decisions below accepted the arbitration awards of the Joint Arbitration Panel and are consistent with the opinions of this court in *Humphrey v. Moore*, 375 US 342; *General Drivers Local 89 v. Riss & Co.*, 372 US 517.

In addition, there is no conflict in the Circuit Courts of Appeal on the interpretation and application of the decision of this Court in *Vaca v. Sipes*, 386 US 171. In those cases where the employees assert that the arbitration process did not result in a fair handling of their grievance, the Courts of Appeal have been reviewing these claims, *and the facts on which they are based*, against the fair representation standard established by this Court.

To *prove* a breach of the duty of fair representation is much more difficult than to *allege* it and this court has expressed itself to the effect that in these cases "there must be substantial evidence of fraud, deceitful actions or dishonest conduct." *Amalgamated Association v. Lockridge*, 403 US 274, 279.

It is clear from the petition for certiorari that no claim is made that the International Union, through its officers or agents, engaged in any conduct whatever against the petitioners, independent of the conduct claimed to have been engaged in by the Local Union. It is asserted by Petitioners that liability of the International Union is "vicarious".

The law has long recognized the International Unions as separate legal entities. In the case of *International Bro. of Electrical Workers (Franklin Elec. Constr. Co.)*, 121 NLRB 143 at 145-146, 42 LRRM 1301 at 1303 (July 24, 1958), the NLRB summarized the established case law on this point and said:

> "The overwhelming weight of judicial authority including the Supreme Court of the United States, is that a local union is a legal entity apart from its international and that it is not a mere branch or arm of the latter. That too has been the position of the Board." [citing cases]

Petitioners' reliance on *IBT v. United States*, 275 F.2d 610 and *Great Coastal Express, Inc. v. IBT*, 350 F. Supp. 1377 is entirely misplaced. In *IBT v. U.S.*, a Local Union in trusteeship, and being operated directly by the International Union, levied an illegal secondary boycott on freight handled by a non-union trucking company. The court held that this type of activity could not be engaged in by a local union without the International's specific approval. In such circumstances, the Court held, the assertion that the Local officer was acting for an autonomous and independent local and not for the International "cannot be squared with realism", 275 F.2d at p. 614.

Whatever independent legal significance the special facts in *IBT v. US*, supra, may or may not have, they differ substantially from the facts presented in the case at bar. Here the Local Union was engaged in the processing of grievances filed by discharged employees pursuant to a collective bargaining agreement. The agreement contains a specific procedure for the processing of these grievances and this procedure was followed by the local union. At no time was any officer or agent dispatched by the International Union to assist in the processing of these grievances.

The physical facts of industrial relations in the United States today would lend no credence whatever to an assertion that an International Union becomes "vicariously" liable for torts committed by an affiliated Local Union which occur while processing grievances for its members. Unlike activities which may occur during prolonged labor disputes where the record may show direct involvement on the part of the International Union, the

present case shows only that a local grievance was processed by local union officers pursuant to the procedures established by a collective bargaining agreement with no separate or independent involvement by the International Union.

In these circumstances there is no basis for imputing any liability to the International Union.

Respectfully submitted

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